No. 76-731

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1976

RAYMOND J. KAHOUN,

Petitioner,

VS.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner, RAYMOND J. KAHOUN, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit which affirmed the judgment of the United States District Court for the Southern District of Illinois, Southern Division, convicting the petitioner of mail fraud although petitioner's conviction for conspiracy to commit mail fraud was reversed.

OPINION BELOW

The opinion of the Court of Appeals is not report (in fact, the opinion is an "unpublished order not to be cited per circuit Rule 35"), but is printed in the appendix to this petition (Appendix A). The opinion of the Court of Appeals was entered on September 29, 1976. A timely Petition for Rehearing was denied by order entered October 27, 1976 (Appendix C).

JURISDICTION

The judgment of the Court of Appeals was entered on September 29, 1976 (Appendix "A"). A timely Petition for Rehearing was denied on October 27, 1976 (Appendix "C").

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATUTES INVOLVED

§ 1341. Frauds and swindles:

Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, or to sell, dispose of, loan, exchange, alter, give away, distribute, supply, or furnish or procure for unlawful use any counterfeit or spurious coin, obligation, security, or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article, for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whatever to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is

directed to be delivered by the person to whom it is addressed, any such matter or thing, shall be fined not more than $1,000 or imprisoned not more than five years, or both.

Illinois Public Act 77-1989, effective July 1, 1972:

The following sums, or so much thereof as may be necessary, respectively, are appropriated to the President Pro Tempore of the Senate and the Speaker of the House of Representatives for the furnishing of legislative staff, secretarial, clerical, research, technical, telephone, other utility services, stationery, postage, office equipment rental and office rental costs to members of their respective houses throughout the year in connection with their legislative duties and responsibilities and not in connection with any political campaign.

Each member is authorized to approve the expenditure of not more than $6,000 per year for legislative staff, secretarial, clerical, research, technical, telephone, other utility services, stationery, postage, office equipment rental and office rental costs. No authorization by any member of the General Assembly shall be made for any person who is the spouse, parent, grandparent, child, grandchild, aunt, uncle, niece, nephew, brother, sister, first cousin, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law of the members.

Public Act 77-1989, effective July 1, 1972.

QUESTIONS PRESENTED

1. Is the anti-nepotism provision of the Illinois Appropriation (Public Act 77-1989) for payment of salaries to legislator's secretaries prohibiting such payments to relatives of the legislators unconstitutional in its application in this case where the secretary was not married or

related to the legislator prior to and during part of the pay period?

2. Was the Circuit Court of Appeals after having found that there was contradictory proof of the petitioner's connection to the bills in question justified in making its own handwriting comparison and thereupon affirming the petitioner's conviction?

3. Should the petitioner's conviction stand where the only evidence of his connection to the allegedly fraudulent bill is his purported signature said form where the authenticity of said signature was never properly proven?

STATEMENT OF THE CASE

Nature of the Case

This is an appeal from a judgment of conviction entered upon a jury verdict of guilty on a two-count indictment charging the petitioner Raymond J. Kahoun and his wife Maureen L. Kahoun with mail fraud in violation of 18 U.S.C. 1341 and with conspiring to commit the same mail fraud in violation of 18 U.S.C. 371.

The indictment alleged that Raymond J. Kahoun was a member of the General Assembly of Illinois; that there were authorized appropriations by the General Assembly for the furnishing of secretarial services to members of the General Assembly; that said appropriations could not be authorized for any person who was the spouse of a member; and that in November, 1972, Raymond J. Kahoun authorized a payment to Maureen L. Kahoun for the period July, 1972, through December, 1972, Raymond J. Kahoun having married Maureen L. Kahoun on or about July 16, 1972. (R. 1-5)

Verdicts of guilty on both counts were returned as to each defendant. (R. 35-38)

Raymond J. Kahoun was sentenced to 1 year's probation on the mail fraud count and fined $10,000.00 on the conspiracy count. (R. 54)

Maureen L. Kahoun was sentenced to 1 year's probation on each of the two counts to run concurrently and further ordered to make restitution of $3,000.00 during the period of probation to the State of Illinois. (R. 55)

The Circuit Court of Appeals reversed Maureen L. Kahoun's convictions and reversed Raymond J. Kahoun's conviction for conspiracy, but affirmed his conviction for mail fraud.

Pre-Trial Motions

Prior to trial the defendants moved to dismiss the indictment because of the denial of the defendants' rights to a speedy trial in violation of the Constitution and Rule 48(b); because the defendants' rights to due process were violated in that Maureen L. Kahoun was indicted solely because of the failure of Raymond J. Kahoun "to cooperate with the Government"; and because P.A. 77-1989 which prohibits payments to a legislative member's spouse was being unconstitutionally applied. (R. 14)

This motion was denied. (R. 33)

The Trial

At trial it was stipulated that Raymond J. Kahoun was a member of the Seventy-Seventh General Assembly. (Tr. Vol. 2, Page 5) Also a certified and exemplified copy of a marriage license and certificate for Raymond J. Kahoun and Maureen L. Kahoun was admitted into evidence. (Gov. Ex. 2) (Tr. Vol. 2, Page 8)

During the testimony of one WILLIAM OLDANI, Gov. Ex. 3 and 4 being the voucher and warrant for secretarial work to one Maureen Dwyer were admitted into evidence. (Tr. Vol. 2, Page 13)

Mrs. SHIRLEY ANN McCOMBS testified that she was Administrative Assistant to the Director of Operations of the House of Representatives working in the Speaker of House staff. (Tr. Vol. 2, p. 16) She testified that she supervised the processing of the contingent expense section which includes processing the invoice vouchers.

Mrs. McCombs further testified that the invoice vouchers come in from the various representatives and that they may be hand carried or come in by mail. (Tr. Vol. 2, Page 18)

Mrs. McCombs identified Government Exhibit 5 as a State of Illinois invoice voucher payable to Maureen Dwyer dated November 11, 1972, for services from June through December, 1972, in the amount of $3,000.00 and bearing the signature Raymond J. Kahoun. (Tr. Vol. 2, Page 19)

Government Exhibit 3 appears to be the original of Exhibit 5. (Tr. Vol. 2, Page 20)

There is also a bill form certifying that it is in compliance with the requirements of the House Bill.

Government Exhibit 5 was received in evidence. (Tr. Vol. 2, Page 21).

MARGARET PRECHT testified that she was Director of Administrative Services for the Auditor General but that prior to that she was the Administrative Assistant to the Speaker of the House—Robert Blair. (Tr. Vol. 2, Page 22)

She took care of the vouchers. She explained that once invoice vouchers were received and reviewed by the Clerk's office, she then received them. She reviewed the forms and if in proper form she initialed them for Robert Blair. (Tr. Vol. 2, Pages 23-24)

Mrs. Precht identified Government's Exhibit 3 as the invoice voucher for Maureen Dwyer for the period June through December, 1972.

Mrs. Precht identified her initials on the voucher. (Tr. Vol. 2, Page 25)

Mrs. Precht took into consideration the bill form in making her approval. (Tr. Vol. 2, Page 27)

Mrs. Precht further stated that had she known Maureen Dwyer was the wife of Representative Kahoun she would not have approved the voucher. (Tr. Vol. 2, Page 28)

On cross examination Mrs. Precht admitted that she had no way of knowing how or when or under what circumstances the voucher was filled out. (Tr. Vol. 2, Page 30)

Government Exhibit 3 was withdrawn. (Tr. Vol. 2, Page 36)

The Court took judicial notice of Public Act 76-1st S.S.-2 which provided for payments to Legislative secretarial etc., help and provided that no payment could be made to a "spouse" amongst other. (Tr. Vol. 2, Page 38)

The Court further took judicial notice of Public Act 77-355 which was an appropriation bill for the period of 1972 with the same restrictions as the other public act. (Tr. Vol. 2, Page 39)

GLENDA STOWERS testified that she is Supervisor of the mailing division of the State Comptroller's Office which includes supervising the mailing of State warrants. (Tr. Vol. 2, Page 43)

Mrs. Stowers testified concerning Government Exhibit 5 and identified it as a warrant and stated assuming it was a remittance copy that came in the ordinary course of business it would have been folded in thirds and that is what is used for the mailer. (Tr. Vol. 2, Page 45)

KARL KELL then testified that he is a postal inspector and assigned to this case. (Tr. Vol. 2, Page 46)

He went on to testify that on May 17, 1970, he interviewed Maureen Kahoun at her job at the Wiseway Supermarket in Dolton, Illinois and that after she was warned of her rights, she signed a waiver. (Tr. Vol 2, Pages 47-49) The waiver, Government Exhibit 6 was received in evidence. (Tr. Vol. 2, Page 49)

Kell said that Mrs. Kahoun stated that she was formerly Raymond Kahoun's legislative secretary, that she was formerly Maureen Dwyer and married Raymond Kahoun in July, 1972. (Tr. Vol. 2, Page 50)

Kell testified that Mrs. Kahoun said it was her signature on the voucher and the signature of Mr. Kahoun in the certification block. (Tr. Vol. 2, Page 51)

Kell further testified that Mrs. Kahoun stated the address on the form was her parent's address and that she merely shrugged her shoulders when he asked her why she used her former name Maureen Dwyer. (Tr. Vol. 2, Page 51)

Kell further testified that he showed her the warrant—Government Exhibit 4—and that she stated she received it through the mail and cashed it. (Tr. Vol. 2, Page 52)

On cross examination it was pointed out that Kell's written memorandum of the interview states that Mrs. Kahoun said that her mother was sick during the period and that was possibly the reason the check was sent to that address. (Tr. Vol. 2, Page 60)

The memorandum further stated that Mrs. Kahoun "did not explain, however, why she used her maiden name". (Tr. Vol. 2, Page 60)

It was further admitted that Mrs. Kahoun did not identify Raymond Kahoun's signature on the voucher but merely stated his name was written on the voucher. (Tr. Vol. 2, Pages 63-64)

Kell also stated that Mrs. Kahoun told him that she had been spending a great deal of time at her mother's house during November and December, 1972, because her mother was ill. (Tr. Vol. 2, Pages 67-68)

Kell also admitted he found that Maureen Kahoun had continued using her name Dwyer at her job at Wiseway several months after her marriage. (Tr. Vol. 2, Page 73)

The Government then rested. (Tr. Vol. 2, Page 77)

The defense offered Agent Kell's memorandum into evidence as Exhibit i and it was received. (Tr. Vol. 3, Page 4)

The defense rested. (Tr. Vol. 3, Page 7)

The defense motion for judgment of acquittal was denied. (Tr. Vol. 3, Page 28)

Following arguments and instructions the jury returned verdicts of guilty. (Tr. Vol. 3, Page 133)

The defendants filed post-trial motions for new trial or judgment of acquittal including a Supplemental motion supported by affidavit of a handwriting expert whose affidavit indicates that the signature of "Maureen Dwyer" on the voucher dated 11/30/72 as part of Government Exhibit 5 was not signed by Maureen Dwyer. (R. 48-52)

The defendants were sentenced—Raymond Kahoun to one year probation and a $10,000.00 fine and Maureen Kahoun to one year probation and an order of $3,000.00 restitution. (R. 54-55)

Notice of Appeal was timely filed. (R. 57)

The Seventh Circuit Court of Appeals subsequently reversed the convictions of Maureen Kahoun and the conspiracy conviction of Raymond J. Kahoun. However, the Court affirmed the mail fraud conviction of Raymond J. Kahoun. (Appendix "A")

This petition for a Writ of Certiorari follows denial by the Seventh Circuit for a timely Petition for Rehearing. (Appendix "C")

REASONS FOR GRANTING THE WRIT

The Petitioner submits that the application of the Illinois anti-nepotism provision in this case is unconstitutional where it is invoked to punish a legislator for marrying his secretary during a particular fiscal pay period.

The Petitioner further argues that the Circuit Court of Appeals acted in violation of his constitutional right to a fair trial by jury by substituting its own nandwriting comparison and affirming his conviction where the sole proof of his connection with the alleged crime was his purported signature on a voucher and bill form.

ARGUMENT

1.

PUBLIC ACT 77-1989, LAW OF ILLINOIS PROVIDING THAT NO AUTHORIZATION BY ANY MEMBER OF THE GENERAL ASSEMBLY SHOULD BE MADE FOR ANY PERSON WHO IS A SPOUSE OF A LEGISLATIVE MEMBER IS UNCONSTITUTIONAL AS IT AFFECTS THIS CASE WHERE THE SPOUSE HAD BEEN EMPLOYED BY THE LEGISLATOR PRIOR TO THEIR MARRIAGE.

Maureen L. Kahoun was first employed by petitioner Raymond J. Kahoun as a secretary in his capacity as a member of the General Assembly of Illinois in 1970 and was continuously so employed through December 31, 1972. The Kahouns were married on July 12, 1972, which was substantially after her first employment and 12 days into the Illinois fiscal period for which payment the Kahouns were indicted.

It is uncontroverted that by law in Illinois Maureen Kahoun could have been paid for the six month period July, 1972 through December, 1972 at the beginning of July, 1972 prior to her marriage to Raymond J. Kahoun.

It is the petitioner's argument that the anti-nepotism provision in the statute here violates the equal protection of the law and due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution as it is applied to the petitioner and his wife.

In this case the application of the statute would prohibit petitioner from continuing Maureen J. Kahoun in her lawful employment solely because of a change of social status, i.e., a marriage which had nothing to do with her hiring or continuing employment. In other words not only would the statute have the effect of depriving Maureen Kahoun of employment it would have the effect of frustrating recognized public policy in promoting marriage.

It is argued that this is contrary to the espoused legislative intent which was to prohibit the initial hiring of a spouse or relative.

See the case of *Backman* v. *Bateman*, 263 P. 2d 561 (1953) where the Supreme Court of Utah held the State's anti-nepotism statute unconstitutional in so far as it affected a principal and teacher in public schools, who had been employed many years before their brother was elected to a school board. The Court held the application of this statute to these individuals violated their due process and equal protection rights since they were employed prior to the election to the school board of their brother.

Apparently, in this case it would not have been a violation of the law had Raymond Kahoun lived with Maureen without benefit of marriage, but marriage, even though

they had been employer and employee for some time, even part of pay period in question without being married, authentically destroyed Maureen's eligibility to work for Raymond.

It is clear that this was not the intent of the legislature and is contrary to public policy and the Constitutional guarantees of due process and equal protection.

2.

THERE WAS NO PROOF OF RAYMOND KAHOUN'S SPECIFIC CONSCIOUS KNOWLEDGE AND INTENT TO DEFRAUD AND THE CIRCUIT COURT OF APPEALS DENIED PETITIONER HIS CONSTITUTIONAL RIGHT TO A FAIR TRIAL BY JURY BY ASSUMING MATTERS NOT PROVEN AND BY SUBSTITUTING ITS OWN HANDWRITING OPINION FOR ONE NOT IN EVIDENCE.

There is no question that specific conscious knowledge and intent to defraud must be proved by the government in order to sustain a verdict of guilty of the charge of mail fraud. *Fournier* v. *United States*, 7 Cir., 58 F. 2d 3; *United States* v. *Kyle*, 2 Cir., 257 F. 2d 559; *United States* v. *Klein*, 3 Cir., 515 F.2d 751, 753-4; *United States* v. *Skeiner*, 2 Cir., 410 F. 2d 337, 340.

However, in this case, except for the alleged presence of the petitioner's signature on the voucher and bill form (the authenticity of which is questioned) there is no evidence of the petitioner taking part in any mail fraud. All of the evidence in the case was admitted against Maureen Kahoun and supposedly considered against Raymond Kahoun on the theory of conspiracy.

Of course, the Circuit Court of Appeals reversed Maureen Kahoun's convictions and Raymond Kahoun's

conspiracy conviction. The Court then applied the "rule that an objection not raised below may not be raised on appeal". (Opinion, p. 6).

However, even with the evidence actually only legally admissible against Maureen, the only real evidence of petitioner's involvement would be his signatures.

The Circuit Court of Appeals recognizes that the testimony of the government's witness is not really qualified and further recognizes that an examination of all of the various "samples" of petitioner's alleged signature are different. The Court then totally violates the petitioner's right to a fair trial by jury as mandated by the Sixth Amendment to the Constitution and makes its own handwriting comparison. (See Opinion p. 7, footnote 3).

It is thus argued that there was insufficient proof of the petitioner's knowledge and intent.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully submits that this Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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November, 1976.

APPENDIX

APPENDIX "A"

(Unpublished Order Not To Be Cited per Circuit Rule 35)

In the

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

(Argued September 17, 1976)

September 29, 1976

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. PHILIP W. TONE, *Circuit Judge*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 76-1122 vs.

RAYMOND J. KAHOUN and MAUREEN L. KAHOUN,
Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Illinois, Southern Division.
No. S-CR-75-57
Harlington Wood, Jr., *Judge.*

ORDER

Defendant husband and wife were convicted on one count each of mail fraud and conspiracy to commit mail fraud.

Raymond Kahoun was a member of the Illinois General Assembly from 1971 to 1973. In July, 1972, he and his secretary, Maureen Dwyer, were married. In November, 1972, Maureen (Dwyer) Kahoun submitted to the Office of the Speaker of the House a voucher in the name of "Maureen Dwyer" for $3000 as payment for secretarial services rendered from June through December 1972; Raymond Kahoun's signature approving the payment also appeared on the document.

Throughout Kahoun's term in office there was in effect a conflict-of-interest statute prohibiting a state legislator from paying any part of his office allowance ($6000 in 1972) to a relative, including his spouse. To ensure compliance with this statute, legislators were required to sign a "bill form" for each voucher submitted to the Speaker's Office certifying that the payee was not their spouse or related in any other way.

The mail fraud indictment charged that Raymond Kahoun signed such a form with respect to his wife in November, 1972, and thus induced the state to pay her $3000 it would not otherwise have paid. It also charged that Maureen Kahoun and her husband conspired together to misrepresent their marital relationship for the purpose of obtaining that money, which was paid to her by means of a check made out to "Maureen Dwyer" and delivered to her through the mail at her parents' address in Chicago.

On appeal defendants argue that there was not sufficient evidence to sustain the convictions, that their constitutional rights to due process and a speedy trial were violated by the government's inexcusable delay in requesting an indictment, and that the Illinois statute prohibiting the payment in question is unconstitutional as applied to them. We

hold that there was insufficient evidence to sustain a conspiracy conviction against either defendant and insufficient evidence to sustain a mail fraud conviction against Maureen Kahoun.[1] The evidence was sufficient, however, as to Raymond Kahoun on the substantive charge; and because we find his constitutional claims to be without merit, we affirm his conviction on the charge of mail fraud.

1. *Sufficiency of the Evidence*

An essential element of the crime of mail fraud is intent to defraud, *United States* v. *Shavin,* 287 F.2d 647 (7th Cir. 1961), *cert. denied,* 375 U.S. 944 (1963). An essential element of the crime of conspiracy is knowledge of the illegal nature of the activity participated in. *United States* v. *Johnson,* 504 F.2d 622, 629 (7th Cir. 1974); *United States* v. *Annoreno,* 460 F.2d 1303, 1309 (7th Cir.), *cert. denied,* 409 U.S. 873 (1972). Thus, the crucial issue as to Maureen Kahoun is whether she knew about the prohibition on payments to legislators' spouses, or, more specifically, knew about the bill form that had to be submitted along with each pay voucher. The only direct evidence on this point is her statement to a postal inspector that she did not know about the prohibition and had never seen a bill form before.

To rebut this evidence the government relies, for the most part, on her use of the name "Dwyer" on the voucher form and her failure to offer anything more than a smile and a shrug of the shoulders when asked by Kell, the postal

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[1] Given our disposition of Maureen Kahoun's appeal, it is unnecessary to reach her claim that the indictment constituted a violation of her due process rights, because it was in retaliation for her husband's failure to cooperate with the government in another criminal investigation.

inspector, why she had used it instead of her married name. The government argues that the use of the name "Dwyer" is circumstantial evidence of her knowledge that "Maureen Kahoun" could not have collected from the state and that her subsequent failure to give a reason for the misleading identification is an admission of that knowledge.

This evidence is not buttressed by a showing that Maureen Kahoun customarily used her married name in other contexts. The government's only evidence on this point was Kell's testimony that she continued to use the name "Dwyer" in her employment at Wiseway Supermarket until September, 1972, and that throughout the period in question mail was delivered to her at her parents' address under the name "Dwyer."[2] Viewing the evidence, as we must, in the light most favorable to the government, *Hamling* v. *United*, 418 U.S. 87, 124 (1974); *United States* v. *Isaacs*, 493 F.2d 1124, 1146 (7th Cir.), *cert. denied*, 417 U.S. 976 (1974), we nevertheless conclude that the government did not produce enough evidence in this case to permit the inference that Maureen Kahoun submitted the voucher with the intent to defraud the state. Her conviction therefore cannot stand under either the substantive count or the conspiracy count.

The government's failure to produce sufficient evidence that Maureen Kahoun knew of the fraudulent nature of

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[2] In its brief, the government also puts some emphasis on Maureen Kahoun's use of this "false" address. In her interview with Kell, she said that she was staying at her parents' home frequently during the period in question in order to care for her mother, who was recuperating from an operation. While the jury was not compelled to accept this explanation, we think that, without some proof that her use of the address on the voucher was an isolated incident, its use on this occasion could not support an inference of fraudulent intent.

the alleged scheme also requires reversal of Raymond Kahoun's conviction for conspiracy. The indictment charged that the Kahouns conspired with persons unknown to defraud the state; at trial, however, no evidence was introduced to extend the conspiracy beyond the Kahouns themselves. Thus, the validity of Raymond Kahoun's conviction for conspiracy depends entirely on whether there was sufficient evidence to prove the existence of some kind of agreement between him and his wife to defraud the state. *United States* v. *Fleming*, 504 F.2d 1045, 1055 n.9 (7th Cir. 1974). But, because the evidence was insufficient to prove that the wife was a knowing participant in the crime, it follows that it was also insufficient to prove that such an agreement existed. It is axiomatic that, where one defendant in a two-party conspiracy is, or should have been, acquitted, the other must be acquitted as well. *Id.* at 1055. Thus, we reverse Raymond Kahoun's conviction for conspiracy to commit mail fraud.

The substantive charge of mail fraud is another matter, however. On appeal, Raymond Kahoun argues that there is insufficient evidence that he in fact signed the bill form and voucher. At trial, however, the defendant's attorney never questioned the authenticity of the signatures, and the documents were admitted into evidence without objection to the foundation laid for them. This is an appropriate case for applying the rule that an objection not raised below may not be raised on appeal: if the authenticity of the signatures had been made an issue at trial, the government could easily have introduced more evidence on the subject. But even if the rule against new objections were not invoked, we could not agree with defendant's contention that the proof was inadequate. A witness who testified that she recognized Kahoun's signature identified it on

both the voucher and the bill form, and Kell testified that Maureen Kahoun identified her husband's signature on the voucher. This evidence, by itself, was sufficient authentication under Rule 901(b)(2), Fed. R. Evid. But the jury also had the opportunity to make its own independent determination, see Rule 901(b)(3), by comparing the signature on Kahoun's marriage certificate (a public record, authenticated in the proper manner under Rule 901(b)(6)) with his signature on the voucher and bill form of November, 1972; all three documents were placed in evidence.[3]

Raymond Kahoun's signature on the bill form, stating that Maureen Dwyer was not his spouse and approving her application for state funds, is sufficient to prove intent to defraud. The only other element necessary to support the conviction is proof that the mails were used in fact and that the defendant had reason to believe that, in the ordinary course of business, they would be so used. *United States* v. *Strauss,* 452 F.2d 375, 380 (7th Cir. 1971), *cert. denied,* 405 U.S. 989 (1972). We find that there was sufficient evidence in both respects to uphold the conviction of Raymond Kahoun. It is undisputed that Maureen Kahoun received her check—the goal of the scheme—through the

[3] On appeal, defendant argues that the vouchers and bill forms from Mr. Kahoun's term of office, which were all in evidence, were obviously signed by more than one person. At trial the defendant's attorney pointed this out to the jury, adding, however, that the defendant did not "deny that Mr. Kahoun may have authorized somebody to sign it for him." We have examined the documents. It appears to us that, while some of the documents may well have been signed by someone else, the crucial documents of November, 1972, bear the same signatures as that of Raymond Kahoun on his marriage certificate.

mail. There were sufficient facts put into evidence to support the conclusion that Kahoun should have anticipated use of the mails: His wife worked only in Chicago and her Chicago address was typed on both the voucher and the bill form; it would be reasonable for the jury to infer from this that he knew that the check would be mailed to Chicago.

2. *Defendant's Constitutional Claims.*

Kahoun argues that the government's delay in indicting him denied him his Sixth Amendment right to a speedy trial and his Fifth Amendment right to due process. In May, 1974, Postal Inspector Kell interviewed Maureen Kahoun, and Raymond Kahoun was called before a grand jury in the Northern District of Illinois to testify concerning legislative misconduct unrelated to the mail fraud charge. At that time, the government disclosed the results of its mail fraud investigation to the Kahouns and offered to refrain from indicting Maureen Kahoun and to charge Kahoun only with mail fraud in return for Kahoun's cooperation in the pending investigation. The offer was declined. Thereafter, in August, 1975, the Kahouns were indicted; these were the first formal charges lodged against them. The trial was held three months later.

In *United States* v. *Marion,* 404 U.S. 307, 321 (1971), the Supreme Court held that the Sixth Amendment right to a speedy trial does not attach until some type of formal charge, restraining a person's liberty and making him "the subject of public accusation," has been made against him. In this case there was no such charge until the indictment in 1974. Prior to that time the Kahouns were merely the subject of an investigation and attempts at plea-bargaining, which were not made public and which in no way

infringed on their liberty. Because the trial was held three months after the indictment, it is clear that the defendant's right to a speedy trial was not violated.

In *Marion,* the Court also held that, while there might not be a speedy trial consideration involved, delay in charging a defendant could be a violation of his Fifth Amendment due process rights if substantial prejudice to his right to a fair trial resulted from it. While the defendant in this case claims that he was prejudiced by the delay, he indicates no particular way in which his defense was weakened by the passage of time. In the absence of such a showing, we cannot say that he was deprived of his right to a fair trial.

Finally, the defendant argues that the Illinois prohibition against payments to legislators' spouses is unconstitutional as applied here in that it deprives his wife of her right to continued employment simply because of her marital status. Even assuming that this would be a defense to a prosecution for violating the state statute, it is not a defense to the charge of mail fraud. The gist of the offense charged in this case is not that money was wrongfully taken, but rather that the mails were used as part of a plan to gain money by means of a fraudulent misrepresentation. Whether or not Maureen Kahoun was ultimately entitled to the $3,000 is immaterial; her entitlement cannot be used to justify the defendant's false statement, without which the money would not have been paid in December, 1972.

For the foregoing reasons, the defendant Raymond Kahoun's conviction for mail fraud is affirmed and his conviction for conspiracy to commit mail fraud is reversed. Maureen Kahoun's conviction is reversed on both counts.

APPENDIX "B"

(Unpublished Per Curiam Order)

In the

United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

September 29, 1976

Before

Hon. THOMAS E. FAIRCHILD, *Chief Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. PHILIP W. TONE, *Circuit Judge*

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

No. 76-1122 vs.

RAYMOND J. KAHOUN and MAUREEN L. KAHOUN,

Defendants-Appellants.

Appeal from the United States District Court
for the Southern District of Illinois, Southern Division.
No. S-CR-75-57
Harlington Wood, Jr., *Judge*

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby: Raymond Kahoun's conviction for mail fraud is AFFIRMED and his conviction for conspiracy to commit mail fraud is REVERSED; Maureen Kahoun's conviction is REVERSED on both counts; in accordance with the order of this Court entered this date.

APPENDIX "C"

In the

United States Court of Appeals

FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604
October 27, 1976

Before
Hon. THOMAS A. FAIRCHILD, *Chief Judge*
Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. PHILIP W. TONE, *Circuit Judge*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

No. 76-1122 vs.

RAYMOND J. KAHOUN,
Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Illinois, Southern Division
No. S-CR-75-57
Harlington Wood, Jr., *Judge.*

ORDER

On consideration of the defendant-appellant's petition for rehearing filed in the above-entitled cause, all of the members of the panel having voted to deny a rehearing,

IT IS ORDERED that the petition for rehearing in the above-entitled cause, be and the same is hereby, DENIED.